IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 23, 2007

# STATE OF TENNESSEE v. LEVI BATTLE, III

**Appeal from the Criminal Court for Davidson County**
**No. 2003-A-519 Cheryl Blackburn, Judge**

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**No. M2006-00288-CCA-R3-CD - Filed March 29, 2007**

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The Defendant, Levi Battle, III, was indicted by a Davidson County grand jury for possession with the intent to sell or deliver 300 grams or more of a substance containing cocaine, a Class A felony. The Defendant filed a motion to suppress the evidence, which the trial court denied. Thereafter, the Defendant was convicted by a jury for possession of twenty-six grams or more of cocaine with the intent to sell or deliver, a Class B felony. The Defendant was sentenced as a career offender to thirty years in the Department of Correction. The Defendant's sole issue on appeal is whether the trial court erred in denying his motion to suppress. We conclude that the trial court properly denied the motion to suppress and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Geoffrey Coston, Franklin, Tennessee, for the appellant, Levi Battle, III.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Robert McGuire, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

### Background

This case arises from the discovery of cocaine and crack cocaine in the Defendant's vehicle while in the parking lot of the Music City Motor Inn in Davidson County. The Defendant was indicted for possession with the intent to sell or deliver 300 grams or more of cocaine, a Class A felony. See Tenn. Code Ann. § 39-17-417(j)(5). The Defendant filed a motion to suppress, and the trial court held a hearing to determine the validity of the search and seizure of the evidence.

At the motion to suppress hearing, Officer Justin Fox of the Nashville Metropolitan Police Department testified about his encounter with the Defendant on August 22, 2002:

> I was sitting at the Music City Motor Inn on Murfreesboro Road at Fesslers, and I was sitting in a parking lot, which is a high drug and prostitution area. I mean, it was shut down due to that [shortly after this incident occurred].
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> I was sitting there observing vehicles and people and I observed the [D]efendant . . . sitting in his vehicle [for about five minutes] at which point I [then] observed him get out of his vehicle, look back at myself and another officer who was sitting there, and he looked at the officers and walked away from his vehicle.
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> At that point, he walks back to his vehicle, looks at the officers, and stood at his door and started to get in and didn't, and walked back away and walked back and then opens his door and does a throwing motion in his car, as though he threw something down in his car.
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> This whole time, he is watching the officers. He then walks away from his car, starts walking back towards the stairwell, which goes up to the second level. The whole time, he keeps looking over at us. He walks up the stairs, doesn't talk to anybody, doesn't make an effort to go to the office, walks up to the second level, doesn't stop at a door, knock on a door or nothing, starts—keeps—like when he gets to the top level, he is walking back towards the back, which it levels back out where you don't have to take stairs. Just the road goes up to it.
>
> He is still looking at the officers, still doesn't talk to anybody, doesn't stop at any room or anything. He keeps going, walking back. He is still looking back at us like this, at which point he comes to the level part up on the top, which is well, you know, a well amount of ways from the office, because the office was back up front.
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> At that point in time, he was about to make it around the side of the thing, of the building near the back to where I couldn't see, so I pulled up there. I get out. I said, come here. I asked him if he is staying there. He says no. I like [sic] do you have a buddy here? At which time, he said—at first, he said no, and then he looked around and he said yeah, that guy over there.

> Security came over there. The guy who he had said didn't know who he was. Security came over and said there is a trespass waiver on file. If he ain't got a room here, he is trespassing at which point, I placed him into cuffs. I sat him there. I got his ID out after I patted him down. All he had on him was some money he said that he had. I got his ID, ran him through warrants. He didn't have warrants. I ran him through his history. He had a history of not going to court at which point I then walked him back down to where his car was because I had seen him throw something down, and at that point in time, the doors were closed. They weren't locked, but I looked in the vehicle. Yes, there was a mild tint on it. You could still see. It was lit up. You could see two plastic baggies, and one large baggie over on the passenger side seat of a rock substance.
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> At that time, I turned on my flashlight to look in there at it, at which time it was what I observed. I then opened the vehicle and extracted the items.
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> There was two plastic baggies right there where the gear shifter was, and then there was the large plastic baggie, and also a Crown Royal bag which had other baggies in it.
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> I believe it was 308, approximately 307 or 8 grams of crack cocaine, and the rest was powder cocaine. And it did field test positive for a cocaine base.

The Defendant also testified at the motion to suppress hearing regarding the events bringing rise to the indictment:

> Well, I was going down Murfreesboro Road. I was going to go get me a room, and as I got right there at McDonald's, Mr. Fox got behind me. I was headed to the hotel anyway, so I didn't pay no attention. I just went on to the room, so I pulled in my car. He parks over to the side. I get out of my car. I walk up the steps. I look back. My lights are on, so I go back and cut my lights off.
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> I walk up. I was going to go and check out if this way, if this place is worth me getting a room, because I've never been there before or anything before I knew anything about it, so before I could get to the top of the hill, Mr. Fox pulls up. He says what are you doing trespassing? I said I'm not trespassing. I'm fixing to get me a room. He said, no, you are trespassing. What you got in that car? I said ain't nothing in my car. What my car got to do with this? He

> said, well, are you going to give me permission to search that car? I said, no, do you have a search warrant? He said, no, and he snatched my keys out of my hand, put me in the car, doesn't read me no rights, don't tell me I'm under arrest or anything, and he pulls back down to my car, so by this time, I guess the security man comes. I hear him ask him is there any kind of way he could get me for trespass, and he said, yeah, I guess if he don't have a room, so he goes and looks around my car and around my car. I guess it's like, what, 10:30, eleven o'clock that night. It's real dark. He says he sees something sitting on my seat. I was already sitting in the car, but I wasn't handcuffed or anything, so he comes back and tells me I'm under arrest . . . .

Along with his explanation of the events, the Defendant also testified that the tinting on the windows of his car was very dark, "like a limousine," and would not allow anyone to see inside the vehicle as Officer Fox claimed he did. The Defendant also testified that he lived about seven to eight miles from the motel, that he was seeking a motel room because he and his wife were arguing. He admitted that he may have passed many motels between his home and the Music City Motor Inn but stated that he chose this motel because "you can just jump on the Interstate and get off at Fessler's Lane."

After hearing the evidence, the trial court orally denied the Defendant's motion to suppress, stating its reasoning as follows:

> Basically, what I'm [sic] heard, the testimony from Officer Fox is that he was at this location, observed [D]efendant kind of come there. He doesn't get a room. He walks up and down. He inquires as to whether or not he is trespassing. The security guard says he is trespassing. He doesn't—he has prior indications that he would fail to appear in court; therefore, he was taken into custody, and the officer, in plain view, observed the cocaine.
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> Now [the Defendant], on the other had, testifies that he is just there looking for a room. He and his wife got into it, none of which makes any sense, especially since Kingview Drive [where the Defendant resides] is some great distance from the Music City Motor Inn, and there are more than ample hotels between Kingview Drive and Music City Motor Inn for him to get a residence; therefore, I find his testimony not very credible.
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> I'm going to basically deny the motion . . . to suppress . . . .

The trial court subsequently entered a written order denying the motion to suppress.

Following a jury trial, the Defendant was convicted of possession of twenty-six grams or more of cocaine with the intent to sell or deliver, a Class B felony. See Tenn. Code Ann. § 39-17-417(i)(5). The Defendant was sentenced as a career offender to thirty years in the Department of Correction.

This appeal followed.

**Analysis**

The Defendant's sole issue on appeal is whether the trial court properly denied his motion to suppress. On appeal, the Defendant asserts that the search and seizure is unconstitutional and the drug evidence should have been suppressed. Specifically, the Defendant claims: (1) the search did not "meet the standards of the Plain View Doctrine"; (2) the drugs were "not in Plain View"; (3) "Officer Fox had no right to detain Defendant"; (4) there is "no evidence of the element establishing criminal trespass"; and (5) the "cocaine was not found inadvertently." The State responds by arguing that the trial court properly found that the plain view exception to the warrant requirement justified the search and seizure of the drug evidence.

**I. Standard of Review**

Our supreme court has set forth the standard by which finding of facts on a motion to suppress must be reviewed on appeal:

> Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld. In other words, a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise.

State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). However, the trial court's application of the law to the facts is a question of law which this court reviews de novo. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000).

**II. Findings of Fact**

We begin by determining whether the trial court's findings of fact are supported by the record. We conclude that the evidence does not preponderate against the trial court's findings regarding what transpired on August 22, 2002, at the Music City Motor Inn. On the contrary, the trial court's findings were supported by the testimony at the suppression hearing. Therefore, we defer to the trial court's findings of fact in assessing the motion to suppress.

**III. Questions of Law**

A. Reasonable Expectation of Privacy

Our next inquiry is whether the motion to suppress was properly denied as a matter of law. The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures" by government actors and mandates the exclusion of illegally obtained evidence in state courts. U.S. Const. amend. IV; Mapp v. Ohio, 367 U.S. 643 (1961). The first question in determining whether any unreasonable government intrusion occurred is whether the defendant had a reasonable expectation of privacy. Katz v. United States, 389 U.S. 347 (1967).[1]

The State correctly notes that the Defendant had no reasonable expectation of privacy when he parked his car in the hotel parking lot. See State v. Jose Roberto Ortiz, No. M1998-00483-CCA-R3CD, 1999 WL 1295988, at *16 (Tenn. Crim. App., Nashville, Dec. 30, 1999), perm. to appeal denied, (Tenn. Sept. 25, 2000). Although the Ortiz case specifically dealt with the expectation of privacy in an apartment parking lot rather than a hotel parking lot, we see no distinction that would provide the Defendant a reasonable expectation of privacy in his case. Without a reasonable expectation of privacy, the Defendant may not prevail in his argument that his constitutional rights were violated when the officer looked through the windows of his parked car.

B. Plain View Exception to Warrant Requirement

We have concluded that the "search" was lawful. The Defendant also objects to the seizure of the cocaine. A search or seizure is presumed to be unreasonable if conducted without a warrant. See State v. Coulter, 67 S.W.3d 3, 41 (Tenn. 2001). However, there are several exceptions which may rebut the presumption. See id. The plain view exception to the search warrant requirement requires that "the items seized were in plain view[,]" that "the viewer had the right to be in the position to view the items[,]" and that "the incriminating nature of the items was immediately apparent." State v. Cothran, 115 S.W.3d 513, 524-25 (Tenn. Crim. App. 2003). The requirement of "inadvertent discovery" of the evidence no longer exists as a part of the plain view exception to the warrant requirement. Cothran, 115 S.W.3d at 524-25 (Tenn. Crim. App. 2003); see also Horton v. California, 496 U.S. 128, 137-38 (1990); State v. Coulter, 67 S.W.3d 3, 43 (Tenn. 2001).

First, we must determine if the evidence was in plain view. Although the Defendant disputed the officer's ability to see through his car windows, which he described as having very dark tint "like a limousine," the trial court generally discredited the Defendant's testimony and accredited Officer Fox's version of events. Officer Fox stated that the windows had "a mild tint" but that he was able to see through them. When he looked through the windows, even before using his flashlight, Officer Fox was able to see bags containing rock-like substances. Thus, we conclude that the evidence was in plain view.

Next, we must determine if the law enforcement officer was lawfully in a position to view the contraband in the Defendant's car. There is nothing contained in the record that indicates the

[1] "[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." Katz, 389 U.S. at 351 (citations omitted).

officer was unlawfully present in the hotel parking lot. If the officer violated anyone's constitutional rights by entering upon the hotel property, it was the property owner's rights, not the Defendant's.

Finally, we must determine whether the "incriminating nature" of the evidence was "immediately apparent." Officer Fox, whose testimony the trial court accredited over the Defendant's, testified at the suppression hearing that he observed "two plastic baggies, and one large baggie over on the passenger side seat of a rock substance." He stated that, although the windows had a "mild tint[,]" that he could see because "[i]t was lit up." He then shined his flashlight into the car and verified that the baggies appeared to contain illegal drugs. Because we defer to the trial court's finding that Officer Fox's testimony was credible, we conclude that the incriminating nature of the evidence was immediately apparent.

Because the officer's actions clearly meet the criteria set forth in the plain view exception to the warrant requirement, we conclude that the officer was lawfully able to seize the evidence without a warrant. Therefore, the trial court did not err in denying the motion to suppress the evidence seized.

C. Detention of the Defendant

The Defendant also argues that the search was illegal because the police had no right to detain the Defendant prior to the discovery of the drugs. The trial court found that the officer had a sufficient basis to stop the Defendant and talk to him based upon the officer's observations of the Defendant's suspicious behavior in the parking lot. We conclude that the record supports the trial court's finding that the officer had a reasonable suspicion that a criminal offense had been or was about to be committed on the hotel property. See Terry v. Ohio, 392 U.S.1, 21 (1968). Not long after the officer confronted the Defendant, the hotel security guard approached the two men and advised the officer that, if the Defendant did not have a room, he was trespassing. Subsequently, the officer looked into the Defendant's automobile and saw the contraband. The drugs were not found in a search incident to the Defendant's arrest but rather were found pursuant to the "plain view" exception to the warrant requirement. The trial court did not err by refusing to suppress the evidence based on the detention of the Defendant by the officer.

**Conclusion**

We conclude that the trial court did not err in denying the Defendant's motion to suppress. Based upon the foregoing reasoning and authorities, the judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE